ORIGINAL

Posted 8-14-91

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

AUG 7 3 11 PM '91

In re Application of James Killinger Cornick	File No. BPH-910311MA

RECEIVED
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

For Construction Permit for
a New FM Station on Channel 278A
at Marion, Virginia

To: Chief, FM Branch

Opposition to Petition to Dismiss or Deny

James Killinger Cornick ("Cornick"), by his attorneys, hereby submits his opposition to the Petition to Dismiss or Deny.[1/] Cornick states the following:

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AUG 07 1991
FM EXAMINERS

I. Introduction

In his application, which was filed on March 11, 1991, Cornick included an exhibit requesting processing under 47 C.F.R. § 73.215. Cornick's exhibit (and entire application) met the Commission's tenderability criteria set forth in Processing of FM Applications, 65 R.R. 2d 1663 (1989), including the tenderability criteria for a § 73.215 exhibit.

The Commission found Cornick's application to be tenderable on May 10, 1991 (Report No. 14991, Mimeo No. 13012). The

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1/ To the extent necessary, Cornick requests leave to submit this opposition out of time because additional time was necessary for engineering analysis and preparation of the amendment attached hereto.

Commission accepted Cornick's application for filing on May 29, 1991 (Report No. NA-148, Mimeo No. 13247).[2/] Mutually exclusive applicant Cope II Broadcasting Partners ("Cope II") subsequently filed a Petition to Dismiss or Deny Cornick's application because Cornick's contour protection map was in error, and, according to Cope II, prohibited contour overlap would occur between WIMZ and Cornick's proposed station.

Cornick has corrected the error with an amendment,[3/] which shows that Cornick's application, as amended, does qualify for treatment under 47 C.F.R. § 73.215. Pursuant to the Commission's policy regarding the processing of FM applications under § 73.215 (such as Cornick's), this is not the type of error that warrants dismissal of an application previously accepted for filing by the Commission. None of the cases cited by Cope II address the instant situation, in which the Commission itself accepted Cornick's application for filing; in this situation, the Commission permits an amendment, even post-designation, to make the necessary § 73.215 showing. Thus the Bureau should reject Cope II's Petition and accept Cornick's pre-designation amendment.

2/ Cornick paid his hearing fee on July 15, 1991.

3/ A copy of Cornick's Petition for Leave to Amend and Amendment is attached hereto.

II. The Bureau Should Accept Cornick's Amendment and Reject Cope II's Petition

The Commission has a clear policy concerning applications that are accepted for filing, but are subsequently found not to be grantable:

> If an application is accepted for filing but is subsequently found not to be grantable, the applicant, if not mutually exclusive with other applicants, will be given one opportunity to correct the application. If the acceptable but not grantable application is mutually exclusive, an appropriate issue will be specified in the Hearing Designation Order, or a post-designation amendment, if appropriate, will be required.

Statement of New Policy Regarding Commercial FM Applications That Are Not Substantially Complete Or Are Otherwise Defective, 65 R.R. 2d 1664, 1666 (1988) ("Statement").[4/]

In adopting the new § 73.215, the Commission intended that this policy apply -- i.e., that applicants get the opportunity to correct a § 73.215 showing by, inter alia, a post-designation amendment or meeting an issue after designation. See Processing of FM Applications, 65 RR 2d 1663 (1989)(attaching the Statement as Attachment A). Cornick simply asks that he be given that the Bureau follow the Statement and give him the opportunity to correct his § 73.215 showing.

The cases cited by Cope II are completely inapposite and do not support in any way dismissal of Cornick's application. For

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4/ While Cope II relies on the Report and Order in MM Docket 84-740, the Statement quoted above modified that Report and Order.

instance, in Julie J. Carey, 6 FCC Rcd 1366 (M.M. Bur. 1989), the Bureau refused to allow an applicant to amend because the application was originally returned as untenderable. By contrast, Cornick's application was accepted for tender and, indeed, accepted for filing. In Primemedia Broadcasting, Inc., the applicants did not file amendments to come into compliance with 47 U.S.C. § 310 until after the staff dismissed two of the three applications at issue. Cornick has filed his amendment prior to any dismissal by the Commission and, indeed, after his application was accepted for filing by the Commission, not dismissed as in Primemedia.

The three other cases cited by Cope II are also completely different from Cornick's case.[5/] None of the three involves an application that was accepted for filing by the Commission and was alleged subsequently not to comply with § 73.215, as is the case with Cornick's application. First, Emmy Hahn Limited Partnership, 4 FCC Rcd 8336 (1989) involves an application returned by the staff as unacceptable for filing, and a subsequent amendment. Unlike Cornick, the Hahn application was never accepted for filing.

5/ Cope II also relies erroneously on 47 C.F.R. § 73.3566(a), a regulation that permits the Commission to dismiss applications that are "patently not in accordance with the FCC rules, regulations or other requirements..." § 73.3566 says nothing about which particular defects warrant dismissal or when amendments are proper. The Statement quoted supra specifically permits an amendment by an applicant such as Cornick, after his application was accepted for filing and the 30-day period for amendments as of right expired.

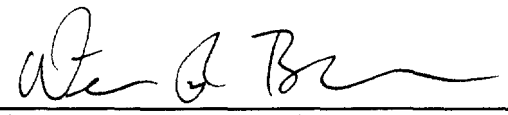
Second, Saxton Steele Communications, 4 FCC Rcd 2094 (1989) involved an application that was initially returned as untenderable and later dismissed as unacceptable for filing. This case is not at all like Cornick's; Cornick's application was accepted for tender and for filing. Third, Stevens Point Communications Corp., 2 FCC Rcd 1747 (M.M. Bur. 1987) is also very different. Stevens Point is another case in which an applicant, unlike Cornick, tried to amend after its application was returned as unacceptable for filing.

Thus, Cope II's argument is erroneous; the Commission's Statement establishes that Cornick should be permitted to amend his application because the Commission accepted it for filing, and an error in a request for § 73.215 processing is the type of error for which an amendment is now proper.

III. Conclusion

For all of the foregoing reasons, the Commission should reject Cope II's Petition and accept Cornick's amendment.

Respectfully submitted,

By: 

William H. Crispin
Dean R. Brenner
VERNER, LIIPFERT, BERNHARD,
McPHERSON and HAND, Chartered
901 15th Street, N.W.
Suite 700
Washington, D.C. 20005-2301

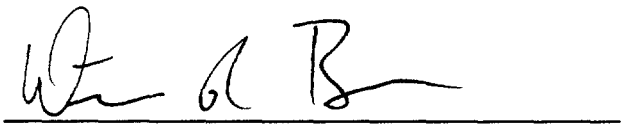
Attorneys for James Cornick

CERTIFICATE OF SERVICE

I, Dean R. Brenner, do hereby certify that on this 6th day of August, 1991, a copy of the foregoing was served by U.S. mail, postage prepaid, on:

Dennis C. Williams
Chief
FM Branch
Federal Communications Commission
Room 332
1919 M Street, N.W.
Washington, D.C. 20554

Grover C. Cooper
Gregory L. Masters
Fisher, Wayland, Cooper & Lender
1255 23rd Street, N.W.
Suite 800
Washington, D.C. 20037



Dean R. Brenner

K:\CL3430\M001\OPPOSE.PET

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In re Application of	)	File No.
	)	BPH-910311MA
James Killinger Cornick	)	

For Construction Permit for
a New FM Station on Channel 278A
at Marion, Virginia

To: Chief, FM Branch

Petition for Leave
to Amend and Amendment

James Killinger Cornick ("Cornick"), by his attorneys and pursuant to 47 C.F.R. § 73.3522(a)(2), hereby seeks leave to submit the attached amendment to establish that Cornick's application qualifies for processing under 47 C.F.R. § 73.215. Cornick states the following:

I. Introduction

Good cause exists for acceptance of Cornick's amendment. By way of background, Cornick filed his application on March 11, 1991. In his application, Cornick included an exhibit requesting processing under 47 C.F.R. § 73.215. Cornick's exhibit (and entire application) met the tenderability criteria set forth in Processing of FM Applications, 65 R.R. 2d 1663 (1989), including the tenderability criteria for processing under § 73.215.

The Commission found Cornick's application to be tenderable on May 10, 1991 (Report No. 14991, Mimeo No. 13012). The

Commission accepted Cornick's application for filing on May 29, 1991 (Report No. NA-148, Mimeo No. 13247.[1/] Mutually exclusive applicant Cope II Broadcasting Partners ("Cope II") subsequently filed a Petition to Dismiss or Deny Cornick's application because Cornick's contour protection map was in error, and, according to Cope II, prohibited contour overlap would occur between WIMZ and Cornick's proposed station.

Cornick seeks leave to amend to correct the error and to show that his application, as amended, does qualify for treatment under 47 C.F.R. § 73.215. The Bureau should accept Cornick's amendment under the "good cause" standard; the Commission's policy, as quoted below, is that once an application is accepted for filing, errors subsequently found may be corrected by amendment. Cornick merely seeks to submit such an amendment.

II. The Bureau Should Accept Cornick's Amendment

The Commission has a clear policy concerning applications that are accepted for filing, but are subsequently found not to be grantable:

> If an application is accepted for filing but is subsequently found not to be grantable, the applicant, if not mutually exclusive with other applicants, will be given one opportunity to correct the application. If the acceptable but not grantable application is mutually exclusive, an appropriate issue will be specified in the

---

1/ Cornick paid his hearing fee on July 15, 1991.

Hearing Designation Order, or a post-designation amendment, if appropriate, will be required.

Statement of New Policy Regarding Commercial FM Applications That Are Not Substantially Complete Or Are Otherwise Defective, 65 RR 2d 1664, 1666 (1989)("Statement").

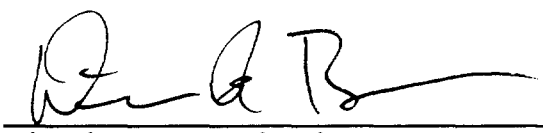
Cornick merely asks for the opportunity to show in the attached amendment that his application does qualify for processing under § 73.215. Cornick's amendment should be accepted under the "good cause" test set forth in Erwin O'Connor Broadcasting Co., 22 F.C.C. 2d 140 (Rev. Bd. 1970). First, the amendment is not the result of a voluntary act; the amendment is necessary for Cornick's application to comply with § 73.215. Second, the amendment does not confer any comparative advantage on Cornick; the amendment relates solely to Cornick's basic qualifications. Third, the need for the amendment was not foreseeable; Cornick's consulting engineer relied on faulty data from a database that, for whatever reason beyond Cornick's control, was erroneous. See Attached Declaration of James E. Price. Fourth, the amendment will not disrupt this proceeding; no hearing has yet been designated. Fifth, Cornick has been diligent. As soon as the error was brought to Cornick's attention, Cornick's engineer obtained the correct data and prepared the amendment. Last, no other applicant will suffer any prejudice. Cornick merely seeks to show that his application does qualify for processing under § 73.215.

Thus, good cause does exist for the acceptance of Cornick's amendment.

III. Conclusion

Wherefore, James Killinger Cornick respectfully requests that the Bureau accept his enclosed amendment.

Respectfully submitted,

By: 

William H. Crispin
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McPHERSON and HAND, Chartered
901 15th Street, N.W.
Suite 700
Washington, D.C. 20005-2301

Attorneys for James Cornick

DECLARATION OF JAMES E. PRICE

JAMES E. PRICE hereby declares as follows:

1. I am holder of a valid General Radio Telephone Operator's License, No. PG-6-22427, issued for life;

2. I have been a member of the Society of Broadcast Engineers since 1978;

3. That I am employed as a staff engineer with the firm of STERLING COMMUNICATIONS, INC., of Chattanooga, Tennessee, specializing in matters relating to the utilization of broadcast radio frequency allocations and the associated RF transmission systems;

4. That STERLING has been retained by James Killinger Cornick (BPH-910311MA), applicant for a new commercial FM broadcast station at Marion, Virginia, for the purpose of assistance in preparing his application for submission to the Federal Communication Commission;

5. That I downloaded by means of a computer, a terrain study on WIMZ Knoxville, Tennessee, which used data obtained from the NGDC. The terrain study was used to prepare an exhibit for inclusion in the application for construction permit. The purpose of the exhibit was to support a request for processing of the application under Section 73.215 of the Rules.

6. That I received a telephone call from Cornick on July 3, 1991. Cornick reported that the competing applicant indicated that there was a problem with the exhibit, specifically with regard to WIMZ.

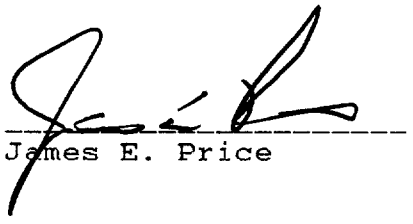
7. That I ran the program again, using the identical specification used in the application. The result of the terrain study did, howver, confirm that the original terrain study with

regard to WIMZ contained an error.

8. That I immediately began preparation of an amendment to the application.

9. That all information presented herein is true to the best of my knowledge, information, and belief.

I **DECLARE** under penalty of perjury that the foregoing is true and correct. Executed on July 31, 1991.



James E. Price

Federal Communications Commission
Washington, D. C. 20554

FCC 301

Approved by OMB
3060-0027
Expires 2/28/92
See Page 25 for information regarding public burden estima

APPLICATION FOR CONSTRUCTION PERMIT FOR COMMERCIAL BROADCAST STATION

For COMMISSION Fee Use Only	FEE NO:	For APPLICANT Fee Use Only Is a fee submitted with this application? ☐ Yes ☐ No
	FEE TYPE:	If fee exempt (see 47 C.F.R. Section 1.1112), indicate reason therefor (check one box): ☐ Noncommercial educational licensee ☐ Governmental entity
	FEE AMT:	
	ID SEQ:	FOR COMMISSION USE ONLY FILE NO.

Section I - GENERAL INFORMATION

1. Name of Applicant			Send notices and communications to the following person at the address below:		
James Killinger Cornick			Name James Cornick		
Street Address or P.O. Box P.O. Box 85			Street Address or P.O. Box P.O. Box 85		
City Marion	State VA	ZIP Code 24354	City Marion	State VA	ZIP Code 24354
Telephone No. (Include Area Code) (703) 783-5126			Telephone No. (Include Area Code) (703) 783-5126		

2. This application is for: ☐ AM ☒ FM ☐ TV

(a) Channel No. or Frequency	(b) Principal Community	City	State
278A		Marion	VA

(c) Check one of the following boxes:

☐ Application for **NEW** station

☐ **MAJOR** change in licensed facilities; call sign: .....

☐ **MINOR** change in licensed facilities; call sign: .....

☐ **MAJOR** modification of construction permit; call sign: .....

File No. of construction permit: .....

☐ **MINOR** modification of construction permit; call sign: .....

File No. of construction permit: .....

☒ **AMENDMENT** to pending application; Application file number: BPH-910311MA

NOTE: It is not necessary to use this form to amend a previously filed application. Should you do so, however, please submit only Section I and those other portions of the form that contain the amended information.

3. Is this application mutually exclusive with a renewal application? ☐ Yes ☒ No

If Yes, state:

Call letters	Community of License	
	City	State

Section V-B - FM BROADCAST ENGINEERING DATA	FOR COMMISSION USE ONLY File No. _____ ASB Referral Date _____ Referred by _____

Name of Applicant

James Killinger Cornick

Call letters *(if issued)*	Is this application being filed in response to a window? [X] Yes [ ] No
(NEW)	If Yes, specify closing date: March 14, 1991

Purpose of Application: *(check appropriate box(es))*

- [X] Construct a new (main) facility
- [ ] Construct a new auxiliary facility
- [ ] Modify existing construction permit for main facility
- [ ] Modify existing construction permit for auxiliary facility
- [ ] Modify licensed main facility
- [ ] Modify licensed auxiliary facility

If purpose is to modify, indicate below the nature of change(s) and specify the file number(s) of the authorizations affected.

- [ ] Antenna supporting-structure height
- [ ] Effective radiated power
- [ ] Antenna height above average terrain
- [ ] Frequency
- [ ] Antenna location
- [ ] Class
- [ ] Main Studio location
- [ ] Other *(Summarize briefly)*

File Number(s) BPH-910311MA

1. Allocation:

Channel No.	Principal community to be served:		
	City	County	State
278	Marion	Smyth	VA

Class *(check only one box below)*

[X] A [ ] B1 [ ] B [ ] C3

[ ] C2 [ ] C1 [ ] C

2. Exact location of antenna.

(a) Specify address, city, county and state. If no address, specify distance and bearing relative to the nearest town or landmark.

SR 622, 7.08 kilometers at 63.51 degrees from the Marion, Smyth County, Virginia, reference point.

(b) Geographical coordinates (to nearest second). If mounted on element of an AM array, specify coordinates of center of array. Otherwise, specify tower location. Specify South Latitude or East Longitude where applicable; otherwise, North Latitude or West Longitude will be presumed.

Latitude	°	'	"	Longitude	°	'	"
	36	52	00		81	26	38

3. Is the supporting structure the same as that of another station(s) or proposed in another pending application(s)? [ ] Yes [X] No

If Yes, give call letter(s) or file number(s) or both. _____

If proposal involves a change in height of an existing structure, specify existing height above ground level including antenna, all other appurtenances, and lighting, if any.

_____

SECTION V-B – FM BROADCAST ENGINEERING DATA (Page 2)

4. Does the application propose to correct previous site coordinates? ☐ Yes ☒ No
If Yes, list old coordinates.

Latitude ° ' "	Longitude ° ' "

5. Has the FAA been notified of the proposed construction? ☒ Yes ☐ No
If Yes, give date and office where notice was filed and attach as an Exhibit a copy of FAA determination, if available.

Exhibit No. FAA-01

Date March 6, 1991 Office where filed AEA-530 Jamaica, NY

6. List all landing areas within 8 km of antenna site. Specify distance and bearing from structure to nearest point of the nearest runway.

	Landing Area	Distance (km)	Bearing (degrees True)
(a)			
(b)			

7. (a) Elevation: *(to the nearest meter)*

(1) of site above mean sea level: 695 meters

(2) of the top of supporting structure above ground (including antenna, all other appurtenances, and lighting, if any); and 98 meters

(3) of the top of supporting structure above mean sea level [(aX1) + (aX2)] 793 meters

(b) Height of radiation center: *(to the nearest meter)* H = Horizontal; V = Vertical

(1) above ground 91 meters (H)

91 meters (V)

(2) above mean sea level [(aX1) + (bX1)] 786 meters (H)

786 meters (V)

(3) above average terrain -18 meters (H)

-18 meters (V)

8. Attach as an Exhibit sketch(es) of the supporting structure, labelling all elevations required in Question 7 above, except item 7(b)(3). If mounted on an AM directional-array element, specify heights and orientations of all array towers, as well as location of FM radiator.

Exhibit No. E-1*

*on file, no change BPH-910311MA

9. Effective Radiated Power:

(a) ERP in the horizontal plane 1.0 kw (H*) 1.0 kw (V*)

(b) Is beam tilt proposed? ☐ Yes ☒ No

If Yes, specify maximum ERP in the plane of the tilted beam, and attach as an Exhibit a vertical elevational plot of radiated field.

Exhibit No.

_____ kw (H*) _____ kw (V*)

*Polarization

10. Is a directional antenna proposed? ☐ Yes ☒ No

If Yes, attach as an Exhibit a statement with all data specified in 47 C.F.R. Section 73.316, including plot(s) and tabulations of the relative field. Exhibit No.

11. Will the proposed facility satisfy the requirements of 47 C.F.R. Sections 73.315(a) and (b)? ☐ Yes ☒ No

If No, attach as an Exhibit a request for waiver and justification therefor, including amounts and percentages of population and area that will not receive 8.16 mV/m service. Exhibit No. E-2

12. Will the main studio be within the protected 8.16 mV/m field strength contour of this proposal? ☒ Yes ☐ No

If No, attach as an Exhibit justification pursuant to 47 C.F.R. Section 73.1125. Exhibit No.

13. (a) Does the proposed facility satisfy the requirements of 47 C.F.R. Section 73.207? ☐ Yes ☒ No

(b) If the answer to (a) is No, does 47 C.F.R. Section 73.213 apply? ☐ Yes ☒ No

(c) If the answer to (b) is Yes, attach as an Exhibit a justification, including a summary of previous waivers. Exhibit No.

(d) If the answer to (a) is No and the answer to (b) is No, attach as an Exhibit a statement describing the short spacing(s) and how it or they arose. Exhibit No. E-2

(e) If authorization pursuant to 47 C.F.R. Section 73.215 is requested, attach as an Exhibit a complete engineering study to establish the lack of prohibited overlap of contours involving affected stations. The engineering study must include the following: Exhibit No. E-2

(1) Protected and interfering contours, in all directions (360), for the proposed operation.
(2) Protected and interfering contours, over pertinent arcs, of all short-spaced assignments, applications and allotments, including a plot showing each transmitter location, with identifying call letters or file numbers, and indication of whether facility is operating or proposed. For vacant allotments, use the reference coordinates as the transmitter location.
(3) When necessary to show more detail, an additional allocation study utilizing a map with a larger scale to clearly show prohibited overlap will not occur.
(4) A scale of kilometers and properly labeled longitude and latitude lines, shown across the entire exhibit(s). Sufficient lines should be shown so that the location of the sites may be verified.
(5) The official title(s) of the map(s) used in the exhibits(s).

14. Are there: (a) within 60 meters of the proposed antenna, any proposed or authorized FM or TV transmitters, or any nonbroadcast *(except citizens band or amateur)* radio stations; or (b) within the blanketing contour, any established commercial or government receiving stations, cable head-end facilities, or populated areas; or (c) within ten (10) kilometers of the proposed antenna, any proposed or authorized FM or TV transmitters which may produce receiver-induced intermodulation interference? ☐ Yes ☒ No

If Yes, attach as an Exhibit a description of any expected, undesired effects of operations and remedial steps to be pursued if necessary, and a statement accepting full responsibility for the elimination of any objectionable interference (including that caused by receiver-induced or other types of modulation) to facilities in existence or authorized or to radio receivers in use prior to grant of this application. *(See 47 C.F.R. Sections 73.315(b), 73.316(e) and 73.318.)* Exhibit No.

15. Attach as an Exhibit a 7.5 minute series U.S. Geological Survey topographic quadrangle map that shows clearly, legibly, and accurately, the location of the proposed transmitting antenna. This map must comply with the requirements set forth in Instruction V. The map must further clearly and legibly display the original printed contour lines and data as well as latitude and longitude markings, and must bear a scale of distance in kilometers.

Exhibit No. E-3*

on file, no change, BPH-910311MA

16. Attach as an Exhibit *(name the source)* a map which shows clearly, legibly, and accurately, and with the original printed latitude and longitude markings and a scale of distance in kilometers:

Exhibit No. E-4

(a) the proposed transmitter location, and the radials along which profile graphs have been prepared;

(b) the 3.16 mV/m and 1 mV/m predicted contours; and

(c) the legal boundaries of the principal community to be served.

17. Specify area in square kilometers (1 sq. mi. = 2.59 sq. km.) and population (latest census) within the predicted 1 mV/m contour.

Area 419.13 sq. km. Population 27134

18. For an application involving an auxiliary facility only, attach as an Exhibit a map *(Sectional Aeronautical Chart or equivalent)* that shows clearly, legibly, and accurately, and with latitude and longitude markings and a scale of distance in kilometers:

Exhibit No.

(a) the proposed auxiliary 1 mV/m contour; and

(b) the 1 mV/m contour of the licensed main facility for which the applied-for facility will be auxiliary. Also specify the file number of the license.

19. Terrain and coverage data *(to be calculated in accordance with 47 C.F.R. Section 73.313)*

Source of terrain data: *(check only one box below)*

[X] Linearly interpolated 30-second database [ ] 7.5 minute topographic map

(Source: NGDC)

[ ] Other *(briefly summarize)*

SECTION V-B – FM BROADCAST ENGINEERING DATA (Page 5)

Radial bearing (degrees True)	Height of radiation center above average elevation of radial from 3 to 16 km (meters)	Predicted Distances	
		To the 3.16 mV/m contour (kilometers)	To the 1 mV/m contour (kilometers)
* 244	See Exhibit E-5		
0			
45			
90			
135			
180			
225			
270			
315			

*Radial through principal community, if not one of the major radials. This radial should NOT be included in the calculation of HAAT.

20. Environmental Statement *(See 47 C.F.R. Section 1.1301 et seq.)*

Would a Commission grant of this application come within Section 1.1307 of the FCC Rules, such that it may have a significant environmental impact? ☐ Yes ☒ No

If you answer Yes, submit as an Exhibit an Environmental Assessment required by Section 1.1311. Exhibit No.

If No, explain briefly why not.
The proposed construction does not require any action covered by 1.1307 of the Rules. ANSI standards regarding non-ionizing radiation would not be exceeded. See ANSI Exhibit. E-6.

CERTIFICATION

I certify that I have prepared this Section of this application on behalf of the applicant, and that after such preparation, I have examined the foregoing and found it to be accurate and true to the best of my knowledge and belief.

Name *(Typed or Printed)*	Relationship to Applicant *(e.g., Consulting Engineer)*
James E. Price	Technical Consultant
Signature: James E. Price	Address *(Include ZIP Code)* Sterling Communications, Inc. P.O. Box 80484 Chattanooga, TN 37411-7484
Date July 23, 1991	Telephone No. *(Include Area Code)* (615) 899-9393

Exhibit FAA-01
James K. Cornick
Marion, Virginia
FAA Determination Of No Hazard

U.S. Department of Transportation
Federal Aviation Administration

Eastern Region

Fitzgerald Federal Building
John F. Kennedy
International Airport
Jamaica, New York 11430

ACKNOWLEDGEMENT OF NOTICE OF PROPOSED CONSTRUCTION OR ALTERATION

CITY	STATE	LATITUDE/LONGITUDE	MSL	AGL	AMSL
MARION	VA	36-52-00.00 081-26-38.00	2280	320	2600

JAMES K. CORNICK
STERLING COMMUNICATIONS, INC.
P.O. BOX 80484
CHATTANOOGA, TN 37411-7484

AERONAUTICAL STUDY
No: 91-AEA-0416-OE

Type Structure: ANTENNA TOWER 103.5 MHZ 6 KW ERP ONLY

The Federal Aviation Administration hereby acknowledges receipt of notice dated 03/06/91 concerning the proposed construction or alteration contained herein.

A study has been conducted under the provisions of Part 77 of the Federal Aviation Regulations to determine whether the proposed construction would be an obstruction to air navigation, whether it should be marked and lighted to enhance safety in air navigation, and whether supplemental notice of start and completion of construction is required to permit timely charting and notification to airmen. The findings of that study are as follows:

The proposed construction would not exceed FAA obstruction standards and would not be a hazard to air navigation. However, the following applies to the construction proposed:

The structure should be obstruction marked and lighted per FAA Advisory Circular AC 70/7460-1, 'Obstruction Marking and Lighting'. CHAPTERS: [X]-3 [X]-4 [X]-5 []-6 []-7 []-8 [X]-9.

Supplemental notice is required at least 48 hours before the start of construction and within five days after construction reaches its greatest height (use the enclosed FAA form).

This determination expires on 10/18/91 unless application is made, (if subject to the licensing authority of the Federal Communications Commission), to the FCC before that date, or it is otherwise extended, revised or terminated.

If the structure is subject to the licensing authority of the FCC, a copy of this acknowledgement will be sent to that Agency.

NOTICE IS REQUIRED ANYTIME THE PROJECT IS ABANDONED OR THE PROPOSAL IS MODIFIED

SIGNED Robert P. Abrams for Francis T. Jordan Specialist, Systems Management Branch
(718)917-1230/1228
ISSUED IN: Jamaica, New York ON 04/18/91

Exhibit E-2 (Amended 07/91)
James K. Cornick
Marion, Virginia
Request For Processing Under FCC R&R 73.215

The Commission assigned FM Channel 278A to Marion, Virginia, in a Report And Order (Docket 90-412), Released December 26, 1990. The assignment became effective February 11, 1991. The filing window opened February 12, 1991, and closes March 14, 1991.

The applicant hereby requests processing under Section 73.215 of the Rules. In support of this request, the following is shown:

(1) The Marion, Virginia, assignment was made with a site restriction 13.5 kilometers northeast to avoid a short-spacing to WIMZ Knoxville, Tennessee. The Commission substituted FM Channel 237A for FM Channel 276A, assigned to Rural Retreat, Virginia, at the transmitter site specified in the construction permit of WCRR Rural Retreat, Virginia.

(2) The applicant's proposed transmitter site meets the distance separation requirements of Section 73.207 of the Commission's Rules with the exception of WIMZ Knoxville, Tennessee. The applicant's proposed transmitter site is located 219.88 kilometers from co-channel WIMZ Knoxville, Tennessee. The required separation is 226 kilometers.

(3) Marion, Virginia, is located in the Appalachian Mountains. Much of the area in which a fully spaced transmitter site may be located is within the Jefferson National Forest. This area is further limited by the need to provide line-of-site and city grade coverage to the community.

(4) The site chosen by the applicant is on private property. It is owned by the applicant's father, and there is no question regarding the availability of the proposed transmitter site.

(5) The proposed site will permit unobstructed city grade coverage to 98.22 percent of Marion, Virginia.

(6) The site is level. Extensive grading or fill will not be necessary.

(7) Electric power and telephone service is available at the site.

(8) The site is accessible the year around via SR 622. SR 622 is paved and maintained by the State Of Virginia.

Figure 1 of this exhibit is an FM separation map showing each facility and assignment receiving consideration. Figures 2, 3, and 4 are furnished to identify the facilities shown on the separation map.

Figures 5 & 6 are furnished to show that there is no overlap of the 60 and 40 dBu contours of the proposed new Marion, Virginia, facility, and WIMZ Knoxville, Tennessee. Shown are the protected (60 dBu) and interfering (40 dBu) contours, in all directions, for the proposed facility, and the protected and interfering contours, over pertinent arcs, for WIMZ. The transmitter site for the proposed new Marion, Virginia, facility, and the transmitter site for WIMZ have been plotted on Figure 5. Both maps, Figures 5 & 6, include a scale of kilometers and lines of longitude and latitude so the location of the transmitter sites may be verified. Figure 7 is a tabulation of the contour calculations for WIMZ.

Request For Waiver of 73.315

The proposed facility will cover 98.22 percent of Marion, Virginia, with a 70 dBu signal. Figure 8 of this exhibit shows the area of Marion outside the 70 dBu contour. Within the 1.78 percent (0.2 square kilometers) of Marion outside the 70 dBu contour, there resides approximately one-hundred twenty-five (125) persons, or 1.7 percent of the population of Marion, Virginia.

Based upon the foregoing, the applicant respectfully requests that the Commission waive Section 73.315 of its Rules to the extent necessary to permit a grant of the instant application.

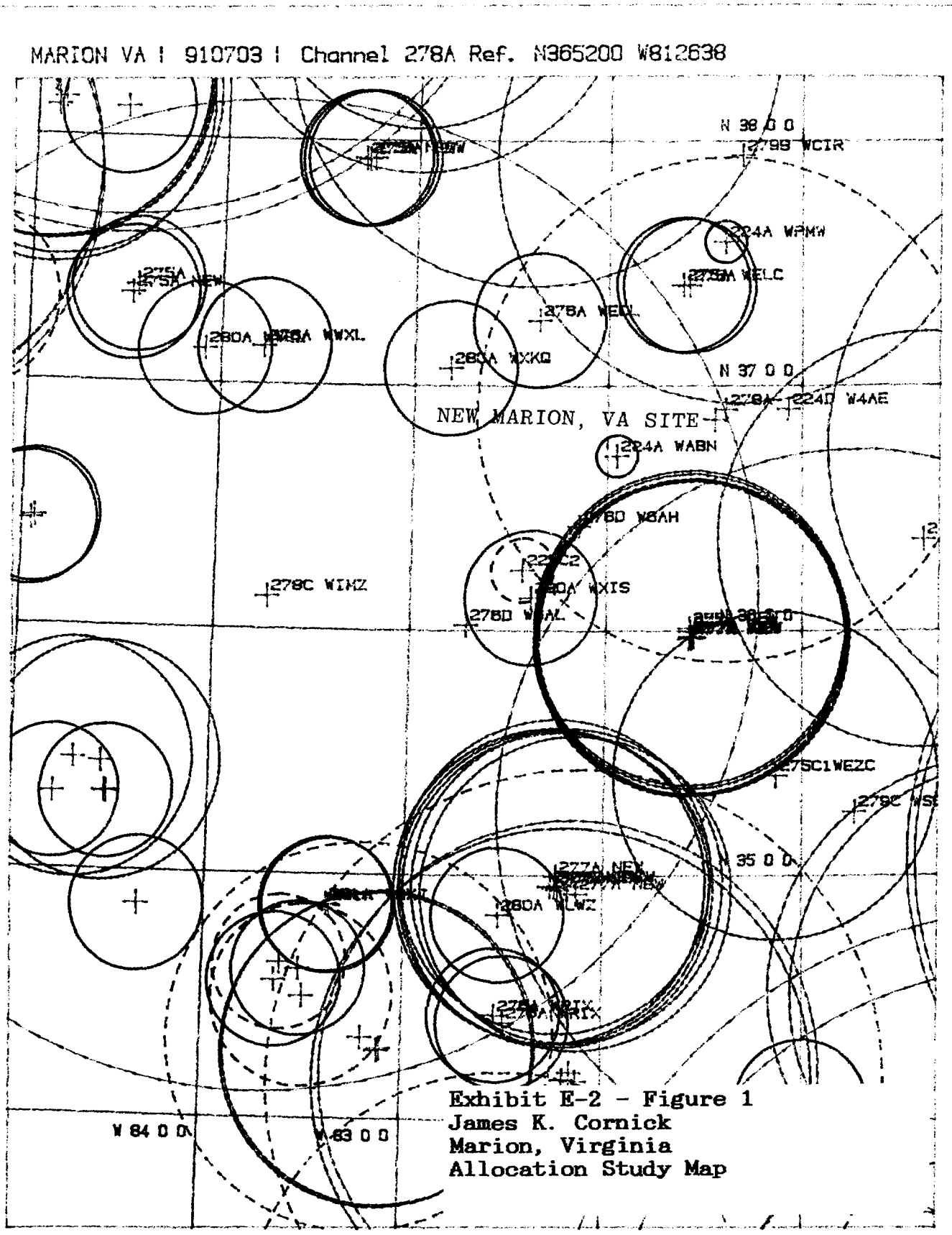


Exhibit E-2 - Figure 1
James K. Cornick
Marion, Virginia
Allocation Study Map

IDENTIFICATION OF FACILITIES FOR FM SEPARATION MAP

MARION VA : 910703 :

REFERENCE POINT: N LAT 36-52-00 W LNG 81-26-38

COMMERCIAL FM SEPARATION STUDY FOR CHANNEL 278 A
(FREQUENCY 103.5 MHZ.)

CHAN	CALL	CITY AND STATE	CL	TYP	N LAT	W LNG	D(km)	D(mi)	AZIMUTH	ERP	HAAT(M)	REQ'D SEP., KM
275C3		Clarkesville GA	C3	AD	34-30-00	83-30-00	321.86	199.99	215.81	0	0	41.5 km.
275A		Clarkesville GA	A	DE	34-38-09	83-36-52	315.92	196.3	218.93	0	0	30.5 km.
275A		Clarkesville GA	A	AS	34-36-36	83-31-12	312.99	194.48	217.36	0	0	30.5 km.
275A	WMJE	Clarkesville GA	A	CP	34-33-49	83-38-26	323.74	201.16	218.4	1.8	125	30.5 km.
275A		West Liberty KY	A	AS	37-55-24	83-15-30	198.92	123.6	306.79	0	0	30.5 km.
275A	NEW	West Liberty KY	A	AP	37-55-36	83-16-35	200.42	124.54	306.61	6	100	30.5 km.
275A	NEW	West Liberty KY	A	AP	37-55-33	83-13-55	197.2	122.53	307.25	6	100	30.5 km.
275A		Mount Vernon KY	A	AS	37-23-32	84-25-59	271.95	168.98	283.34	0	0	30.5 km.
275A	NEW	Mount Vernon KY	A	CP	37-21-32	84-27-40	273.68	170.06	282.47	2.5	106	30.5 km.
275A		Raleigh NC	A	AS	35-48-31	78-37-56	278.4	172.99	114.2	0	0	30.5 km.
275A	NEW	Raleigh NC	A	AP	35-50-18	78-36-41	278.68	173.16	113.42	3	100	30.5 km.
275A	NEW	Raleigh NC	A	AP	35-50-59	78-36-56	277.81	172.62	113.22	3	100	30.5 km.
275A	NEW	Raleigh NC	A	AP	35-50-47	78-38-38	275.65	171.28	113.51	3	98	30.5 km.
275A	NEW	Raleigh NC	A	AP	35-49-08	78-36-58	279.22	173.5	113.86	3	100	30.5 km.
275A	NEW	Raleigh NC	A	AP	35-49-58	78-40-39	273.55	169.98	114.07	3	100	30.5 km.
275A	NEW	Raleigh NC	A	AP	35-50-47	78-38-38	275.65	171.28	113.51	3	100	30.5 km.
275A	NEW	Raleigh NC	A	AP	35-50-44	78-38-38	275.68	171.3	113.53	3	99	30.5 km.
275A	NEW	Raleigh NC	A	AP	35-49-20	78-37-06	278.88	173.29	113.81	3	100	30.5 km.
275A	NEW	Raleigh NC	A	AP	35-48-55	78-37-13	279.05	173.39	113.97	3	100	30.5 km.
275A	NEW	Raleigh NC	A	AP	35-50-44	78-38-35	275.75	171.34	113.52	3	100	30.5 km.
275A	NEW	Raleigh NC	A	AP	35-50-09	78-36-50	278.6	173.11	113.49	3	100	30.5 km.
275A	NEW	Raleigh NC	A	AP	35-48-30	78-37-29	279.02	173.37	114.15	3	100	30.5 km.
275C1	WEZC	Hickory NC	C1	LI	35-24-26	81-07-47	164.39	102.15	170.05	31	468	74.5 km.
275A	WELC	Welch WV	A	CP	37-25-01	81-36-58	62.956	39.119	346.05	1.8	129	30.5 km. (CLOSE 32.5)
275A		Welch WV	A	AS	37-24-49	81-34-58	61.94	38.488	348.6	0	0	30.5 km. (CLOSE 31.4)
276A	WECL	Elkhorn City KY	A	LI	37-16-05	82-21-37	92.878	57.712	299.04	.12	418	30.5 km.
276A	WWIL	Manchester KY	A	LI	37-09-14	83-46-31	209.93	130.44	279.47	2.85	94	30.5 km.
276A	WWXL	Manchester KY	A	CP	37-09-13	83-46-26	209.81	130.37	279.47	2.65	103	30.5 km.
276A	WTKT	Georgetown KY	A	LI	38-06-57	84-31-19	305.49	189.82	298.02	3	91	30.5 km.
276A	WRCQ	Dunn NC	A	LI	35-13-41	78-38-53	310.69	193.05	125.11	2.7	98	30.5 km.
276D	WUAG	Greensboro NC	D	LI	36-03-51	79-48-37	171.38	106.49	120.93	.01	79	
276A	WRAC	West Union OH	A	LI	38-51-25	83-36-38	291.81	181.32	319.98	1.4	128	30.5 km.
276A	WONG	Columbia SC	A	LI	34-03-05	81-00-07	314.91	195.68	172.58	3	91	30.5 km.
276A	WRIX	Honea Path SC	A	AP	34-25-31	82-32-26	288.51	179.27	200.38	5.8	100	30.5 km.
276A	WRIX	Honea Path SC	A	LI	34-23-43	82-29-49	290.32	180.4	199.41	3	91	30.5 km.
276D	W6AL	Greeneville, TN	D	LI	36-01-24	82-42-56	147.5	91.652	230.88	.04	0	
276D	W6AH	Johnson City,TN	D	CP	36-25-45	82-08-30	79.059	49.125	232.2	0	0	

Exhibit E-2 - Figure 2
James K. Cornick
Marion, Virginia
Identification Of Facilities
Shown On Allocation Study Map

CHAN	CALL	CITY AND STATE		CL	TYP	N LAT	W LNG	D(km)	D(mi)	AZIMUTH	ERP	HAAT(M)	REQ'D SEP., KM
276A	WDRZ	Etowah	TN	A	LI	35-19-15	84-30-34	325.02	201.96	238.94	3	-4	30.5 km.
276C2		Etowah	TN	C2	AS	35-26-46	84-32-20	320.02	198.85	241.3	0	0	54.5 km.
276C2	WDRZ	Etowah	TN	C2	CP	35-27-24	84-40-43	330.45	205.33	242.6	50	150	54.5 km.
276A	WCLC	Jamestown	TN	A	LI	36-26-31	84-55-28	314.76	195.58	262.39	1.1	140	30.5 km.
276A		Rural Retreat	VA	A	AS	36-53-39	81-14-20	18.529	11.513	80.419	0	0	30.5 km. (SHORT-12)
276A	NEW	Rural Retreat	VA	A	CP	36-54-15	81-10-51	23.817	14.799	79.815	3	100	30.5 km. (SHORT-6.7)
276A	WXKX	Parkersburg	WV	A	LI	39-21-00	81-33-57	275.85	171.41	357.84	.73	168	30.5 km.
277A	NEW	Lenoir	NC	A	AP	35-58-40	81-34-27	99.324	61.717	186.76	3	100	71.5 km. (CLOSE 27.8)
277A	NEW	Lenoir	NC	A	AP	35-58-17	81-33-40	99.898	62.074	186.07	.83	193	71.5 km. (CLOSE 28.4)
277A	NEW	Lenoir	NC	A	AP	35-58-24	81-33-22	99.638	61.912	185.81	.86	185	71.5 km. (CLOSE 28.1)
277A	NEW	Lenoir	NC	A	AP	35-58-30	81-32-58	99.395	61.761	185.47	.74	204	71.5 km. (CLOSE 27.9)
277A	NEW	Lenoir	NC	A	AP	35-58-07	81-34-23	100.32	62.336	186.64	3	100	71.5 km. (CLOSE 28.8)
277A	NEW	Lenoir	NC	A	AP	35-58-31	81-33-05	99.381	61.752	185.57	.55	235	71.5 km. (CLOSE 27.9)
277A	NEW	Lenoir	NC	A	AP	35-58-17	81-33-39	99.896	62.072	186.02	.7	195	71.5 km. (CLOSE 28.4)
277A		Lenoir	NC	A	AS	35-58-38	81-33-57	99.3	61.702	186.33	0	0	71.5 km. (CLOSE 27.8)
277A	NEW	Lenoir	NC	A	AP	35-59-56	81-34-17	96.969	60.254	186.78	3	100	71.5 km. (CLOSE 25.5)
277A	NEW	Lenoir	NC	A	AP	36-00-46	81-34-24	95.46	59.316	186.99	3	100	71.5 km. (CLOSE 24)
277C2	WJMX	Cheraw	SC	C2	LI	34-30-19	79-54-15	296.76	184.4	151.64	44	160	105.5 km.
277C2		Cheraw	SC	C2	AS	34-31-26	80-00-49	290.39	180.44	153.21	0	0	105.5 km.
277A		Greer	SC	A	AS	34-56-24	82-13-36	225.15	139.9	198.45	0	0	71.5 km.
277A	NEW	Greer	SC	A	AP	34-57-18	82-16-03	224.76	139.66	199.48	3	100	71.5 km.
277A	NEW	Greer	SC	A	AP	34-56-59	82-14-43	224.66	139.6	198.94	3	100	71.5 km.
277A	NEW	Greer	SC	A	AP	34-59-41	82-14-20	219.74	136.54	199.21	3	100	71.5 km.
277A	NEW	Greer	SC	A	AP	34-57-18	82-16-03	224.76	139.66	199.48	3	100	71.5 km.
277A	NEW	Greer	SC	A	AP	34-57-18	82-16-04	224.77	139.67	199.48	3	100	71.5 km.
277A	NEW	Greer	SC	A	AP	34-55-33	82-08-04	224.19	139.31	196.28	3	100	71.5 km.
277A	NEW	Greer	SC	A	AP	34-57-23	82-10-43	222.09	138	197.52	3	100	71.5 km.
277A		New Market	VA	A	AS	38-38-00	78-42-42	310.53	192.95	49.894	0	0	71.5 km.
277A	NEW	New Market	VA	A	AP	38-39-32	78-49-16	304.93	189.47	48.364	6	100	71.5 km.
277A	NEW	New Market	VA	A	AP	38-35-11	78-47-21	302	187.65	49.875	3	100	71.5 km.
277A	NEW	New Market	VA	A	AP	38-36-31	78-54-07	295.95	183.89	48.317	2.1	166	71.5 km.
277A	NEW	New Market	VA	A	AP	38-36-00	78-50-08	299.8	186.29	49.168	6	100	71.5 km.
277A	NEW	New Market	VA	A	AP	38-41-10	78-49-29	306.64	190.54	47.892	1	233	71.5 km.
277A	NEW	New Market	VA	A	AP	38-39-32	78-49-16	304.93	189.47	48.364	6	100	71.5 km.
277C1	WAKG	Danville	VA	C1	LI	36-44-28	79-23-05	184.29	114.51	93.737	100	192	132.5 km.
277B	WTCR	Huntington	WV	B	LI	38-25-11	82-24-06	191.98	119.29	334.26	50	150	112.5 km.
278B	WGMS	Washington	DC	B	LI	38-56-09	77-05-33	446.33	277.34	57.602	46	155	177.5 km.
278A		Gibson	GA	A	AD	33-09-36	82-29-33	422.2	262.34	193.35	0	0	114.5 km.
278A		Radcliff	KY	A	AS	37-50-48	85-56-36	413.21	256.76	286.68	0	0	114.5 km.
278A	NEW	Radcliff	KY	A	AP	37-51-08	85-56-45	413.57	256.98	286.76	3	100	114.5 km.
278A	NEW	Radcliff	KY	A	AP	37-47-47	85-56-08	411.23	255.53	285.95	3	100	114.5 km.
278C2		Dunn	NC	C2	AS	35-02-45	78-36-30	325.97	202.55	127.58	0	0	165.5 km.
278C2	WRCQ	Dunn	NC	C2	CP	35-03-09	78-38-54	322.68	200.5	127.89	48	153	165.5 km.
278B	WRKY	Steubenville	OH	B	LI	40-20-32	80-37-14	392.42	243.84	10.231	16	268	177.5 km.
278A		Lancaster	OH	A	AS	39-45-48	82-35-05	336.66	209.19	343.18	0	0	114.5 km.
278A	WSHZ	Lancaster	OH	A	CP	39-43-58	82-35-43	333.7	207.35	342.86	3	100	114.5 km.
278B	WGRR	Hamilton	OH	B	AP	39-12-01	84-31-22	374.38	232.63	314.84	10.5	322	177.5 km.
278B	WGRR	Hamilton	OH	B	LI	39-16-24	84-31-37	380.2	236.25	315.7	19.5	241	177.5 km.
278A	WLAK	Huntingdon	PA	A	LI	40-29-51	78-08-00	495.49	307.88	34.42	.16	435	114.5 km.
278C1	WEZL	Charleston	SC	C1	LI	32-49-04	79-50-08	472.64	293.68	161.48	100	201	199.5 km.

Exhibit E-2 - Figure 3
James K. Cornick
Marion, Virginia
Identification Of Facilities
Shown On Allocation Study Map